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SOUTHERN DISTRICT OF CALIFORNIA

BY EDM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RIGOBERTO ARZATE MIRANDA,

Petitioner,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

Civil No. 11-2002 BEN (WMc)

ORDER:

- (1) DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY

(2) DENYING REQUEST FOR DE
NOVO REVIEW BY DISTRICT JUDGE

[Docket No. 38]

Presently before the Court is Petitioner's Request for Certificate of Appealability. (Docket No.

38.) Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 was previously denied by the Court. (Docket No. 36.) Petitioner now requests (1) a certificate of appealability, and (2) de novo review by a district judge.

First, 28 U.S.C. § 2253(c)(1) provides:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.

"[A]n appeal from an order denying a 28 U.S.C. § 2241 petition that is not a final order in a habeas proceeding in which the detention complained of arises out of process issued by a *State court*"

1 does not require a certificate of appealability under § 2253(c)(1). *Forde v. U.S. Parole Comm'n*, 114
2 F.3d 878, 879 (9th Cir. 1997) (emphasis added). Here, Petitioner is currently serving his sentence in the
3 United States Penitentiary Big Sandy, in Inez, Kentucky. Because he is a federal prisoner, the certificate
4 of appealability is **DENIED** as unnecessary. *See id.*

5 Second, Petitioner requests de novo review by a district judge, arguing that (1) he was "never
6 given a notice of the district[] court['s] final judgment after remand," and (2) "relief under 2255 is not
7 applicable to ground 4 of this writ of habeas corpus." (Request for Certificate of Appealability, at 2.)
8 The Petition was disposed of by a district judge, not a magistrate judge, making this request moot.
9 Moreover, the reasons for Petitioner's request for de novo review are unpersuasive. Accordingly,
10 Petitioner's request for de novo review by a district judge is **DENIED** as moot.

11 **IT IS SO ORDERED.**

12 DATED: 6/01/2012

13 HON. ROGER T. BENITEZ
14 United States District Court Judge

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